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New Law for Establishing Fact of Birth

The Legislature, in Chapter 95, Statutes of 1941, amended Division 9, Chapter 8, of the Health and Safety Code, which deals with the procedure for judicially determining fact of birth, death or marriage where no record thereof exists or where the record has been lost or destroyed.

Upon request addressed to the Attorney General for an opinion as to the effect of such amendments, the following was received from Earl Warren, Attorney General, as prepared by Thomas Coakley, Deputy:

"With respect to births, deaths and marriages alleged to have occurred in California, Health and Safety Code Section 10600 as amended (Stats. 1941, Chap. 95, Sec. 2) provides that a petition to establish such fact may be filed (a) in the superior court of the county in which the event allegedly occurred, or (b) in the county in which the person whose birth or marriage is sought to be established is residing, or, if it is sought to establish the death of a person, in the superior court of the county in which such person was domiciled at death. Health and Safety Code Section 10600 was originally enacted in 1915. (Stats. 1915, p. 575.)

With respect to births, deaths or marriages alleged to have occurred outside of California, Health and Safety Code Section 10600.5 provides that the petition shall be filed in the county in which the person whose birth or marriage is sought to be established resides at the time of the filing of the petition. If the petition seeks to establish the death of a person, it shall be filed in the county of domicile at date of death. Said section was added by Statutes of 1939, Chapter 1120. It has not been amended.

Service of copies of petitions filed pursuant to Health and Safety Code Sections 10600 and 10600.5 is provided for in Health and Safety Code Section 10602.

Prior to the recent amendments referred to in your letter, said section read as follows:

"A copy of the petition shall be served upon the local registrar of vital statistics, and also upon the district attorney of the county in which the birth, death, or marriage is alleged to have occurred, and either may appear at the hearing and oppose the making of the order."

As amended, (Stats. 1941, Chap. 95, Sec. 4), said section reads:

"A copy of the petition shall be served upon the local registrar of vital statistics referred to in Article 3 of Chapter 2 of this division and also upon the district attorney of the county in which the petition is filed, together with a notice of the time and place of hearing and either may appear at the hearing and oppose the making of the order."

Article 3 of Chapter 2, therein referred to, consists of Sections 10100 to 10200 of the Health and Safety Code. Said chapter and article define the office of local registrar and provide the duties thereof.

In my opinion the only substantive change with respect to service made by the 1941 amendment, supra, is with respect to service upon the district attorney. Whereas formerly service was required to be made upon the district attorney of the county in which the birth, death or marriage allegedly occurred, now it must be served upon the district attorney of the county in which the petition is filed.

With respect to service upon the local registrar, no change has been effected by the addition of the words "referred to in Article 3, Chapter 2 of this division," for the reason that prior to the amendment, as now, said chapter and article (and its predecessor, Stats. 1915, p. 575) was and is the only place in the laws of this State wherein the office and duties of a local registrar are defined. The addition of the above quoted words merely provides

a ready reference for determining the local registrar upon whom service must be made.

I find no reported case in which Health and Safety Code Section 10602 has been construed. However, with respect to births, deaths or marriages alleged to have occurred in California, your department and this office has at all times since the adoption of said section (originally Stats. 1915, p. 585, Sec. 21) construed said provision to mean that service of the copy of the petition must be had upon the local registrar of the registration district in which the event sought to be judicially established allegedly occurred. This continues to be my view at this time with respect to said section as amended. I may add that while there may be more than one registration district in some counties, there is only one local registrar for each registration district and it is upon the local registrar of the registration district in which the event occurred that a copy of the petition must be served.

With respect to service upon local registrars, great difficulty is experienced in applying Health and Safety Code Section 10602 to petitions filed pursuant to Health and Safety Code Section 10600.5, viz., where the event occurred outside of California. To hold that the Legislature intended to provide that service must be had upon a local registrar, if such there be, in some other State or county, would be contrary to well established rules with respect to jurisdiction and service of process.

It is therefore my opinion that with respect to births, deaths or marriages alleged to have occurred outside of California, the provision of Health and Safety Code Section 10602, providing for service upon the local registrar, is inapplicable and that service is required to be made only upon the district attorney of the county in which the petition is filed.

In conclusion:

(1) With respect to births, deaths or marriages alleged to have occurred in California, service of copies of the petition must be had upon:

- (a) The local registrar of the registration district in which the event allegedly occurred, and
- (b) The district attorney of the county in which the petition is filed.

(2) With respect to births, deaths or marriages alleged to have occurred outside of California, service must be had only upon the district attorney of the county in which the petition is filed."

The most common nuisances reported to health officers are odor nuisances. To be sure, very few, if any odor nuisances, are detrimental to individual health, although they may constitute offenses to the senses, and may be very disturbing to the comfort of the individuals concerned.

"We become willing servants to the good by the bonds their virtues lay upon us. Service to man is the highest service to God."—Sidney.

MAY NURSE OR TEACHER TREAT DISEASE?

In an opinion prepared at the request of the California Board of Medical Examiners, under date of July 10, 1941, Attorney General Earl Warren, Thomas Coakley, Deputy, provides a clear statement of the limitations that the law places upon nurses and teachers in the provision of treatment and diagnosis of disease. Health officers, school employees and nurses will find valuable information in the opinion, which follows:

"Your request of recent date propounds the following questions:

1. Is it legal for teachers or nurses while being paid for their services as such to give treatments other than the first one to students or others for boils, warts, carbuncles, cuts, lacerations, moles, abrasions, contusions, or sprains?

2. Is it legal for nurses or teachers while employed as such to diagnose diseases, and/or placard or quarantine cases without a licensed practitioner's prior diagnosis?

3. Is it legal for a doctor of medicine to delegate authority to teachers or nurses employed as such or others for pay or without pay to diagnose diseases or give treatments for patients not under his immediate supervision?"

Preliminarily, it should be noted that the practice of the healing arts is limited to persons duly licensed under the various laws of the State regulating the several types of practice or systems of treating the sick and afflicted. Anyone who diagnoses or treats another without possessing a license to employ the particular type or mode of treatment used in the particular case is guilty of a misdemeanor. (Business and Professions Code Section 2141; also opinion NS3128.)

The exceptions to the foregoing are (a) emergency treatment which may be rendered by anyone, including teachers or nurses (Business and Professions Code Section 2144) and (b) nursing service rendered under the supervision and direction of a person licensed to practice one or more of the healing arts.

In answer to your first question, I find no authority by which a teacher or nurse may treat for any injury or disease, except under the circumstances described in (a) and (b) above. I might add that I am unable to perceive how, for example, treatment for a wart or mole could be considered emergency treatment. To come within the exceptions noted, the emergency must be bona fide.

Your second question is likewise answered in the negative.

As pointed out in the beginning of this opinion, Business and Professions Code Section 2141 makes it unlawful for anyone not licensed as a physician, drugless practitioner, chiropodist or midwife to diag-

nose the mental or physical condition of another. Under the established principle of law that statutes on the same general subject, called statutes *in pari materia*, must be read and construed together, we must add to the foregoing list of persons who may lawfully diagnose conditions coming within the authorized scope of their practice or treatment, licensed naturopaths, osteopaths, chiropractors and dentists. (See 23 Cal. Jur., p. 785; also opinion NS3128.) All persons not licensed to practice one of the modes of treating the sick and afflicted, mentioned in this paragraph, who diagnose diseases, do so in violation of Business and Professions Code Section 2141, and thereby commit misdemeanors. Teachers and nurses, not being so licensed, may not diagnose. Nor do I find any statute authorizing a teacher or nurse to placard or quarantine premises or persons in the absence of a diagnosis by a licensed practitioner of the existence of a quarantinable disease.

Your third question is likewise answered in the negative.

Only licensed practitioners may diagnose or treat. (Business and Professions Code Section 2141.) The privilege or right to practice a particular healing art is a purely personal privilege or right on the part of those who possess the prescribed qualifications, have met the prescribed requirements, and to whom a license has been issued by the duly authorized State agency. It is a privilege or right which can not be delegated to another not similarly licensed. This principle is given express recognition in Business and Professions Code Section 2392, which reads, in part, as follows:

* * * the aiding or abetting of any unlicensed person to practice any system or mode of treating the sick or afflicted constituted unprofessional conduct within the meaning of this chapter.'

This does not, however, prohibit a licensed practitioner, in treating pupils, from using the services of a nurse, acting under his supervision and direction.

The only doubt that may be cast upon the foregoing conclusions to be found in the School Code, Division 1, Chapter 4, Sections 1.110-1.127. However, upon careful analysis, I am of the opinion that there is nothing in said Chapter 4 in conflict with the principles above announced.

Said Chapter 4 provides for supervision of the health of pupils by 'physical inspectors' who may be either a physician, teacher, nurse, oculist, dentist, optometrist, or any one or more of such persons (School Code Section 1.110), and provided such person holds a health and development certificate issued pursuant to the School Code (School Code Section 1.112).

Said chapter further provides, by implication if not expressly, that such physical inspectors shall examine pupils as to their physical condition and note any defect that may exist (School Code Section 1.120), reporting same to the parent or guardian to take action to cure said defect. (School Code Section 1.123.) Said chapter also provides for the giving of sight and hearing tests by physical inspectors. (School Code Section 1.120a.) Finally, the chapter provides that the pupil shall be sent home 'whenever there is good reason to believe that such child is suffering from a recognized contagious or infectious disease.' (School Code Section 1.121.)

Nowhere in said Chapter 4 is there any express or implied authorization given the physical inspector to *treat* any pupil.

Nowhere in said Chapter 4 is the term 'diagnose' used. With reference to the possibility of an implied authorization to diagnose, I do not believe that the Legislature used the term 'examine,' or the term 'testing' of sight and hearing, or the phrases 'any defect noted by the physical inspector' or 'good reason to believe that such child is suffering from a recognized contagious or infectious disease' in the sense of a professional diagnosis as used in and prohibited by Business and Professions Code Section 2141 (discussed *supra*). It is my opinion that said terms and phrases were employed by the Legislature in the sense of an observation by a person trained in a general way to note certain readily recognizable characteristics or symptoms of disease or defects and to report thereon to the parent or guardian or to the school authorities, as required under the circumstances of the particular case.

Any other construction would conflict with Business and Professions Code Section 2141, prohibiting the diagnosing and treating by unlicensed persons. By construing Chapter 4 of Division 1 of the School Code in the manner above indicated, the provisions of said School Code and of the Business and Professions Code, respectively, are reconciled and each given efficacy. The rule is well established that such construction must be accorded wherever possible. (23 Cal. Jur., p. 792.)

Very truly yours,

EARL WARREN, Attorney General
By Thomas Coakley, Deputy"

We must come to realize that only by understanding the history, culture and customs of those who live in distant lands can we really begin to know them.

—GEORGE F. ZOOK,
President, American Council on Education.

MORBIDITY**Complete Reports for Following Diseases for Week Ending July 12, 1941****Chickenpox**

326 cases: Alameda County 10, Berkeley 8, Oakland 32, San Leandro 2, Colusa County 1, El Cerrito 1, Fresno County 7, Fresno 3, Kern County 2, Bakersfield 1, Tehachapi 1, Los Angeles County 33, Alhambra 6, Burbank 1, El Monte 1, Glendale 1, Huntington Park 1, Long Beach 5, Los Angeles 34, Montebello 3, Pasadena 3, Pomona 1, Redondo 1, San Fernando 1, South Gate 3, Signal Hill 1, Fullerton 12, Orange 6, La Habra 1, Riverside 1, Indio 1, Sacramento County 1, Sacramento 10, San Bernardino County 1, San Diego County 4, Coronado 1, National City 2, San Diego 44, San Francisco 21, Stockton 2, San Luis Obispo 1, Burlingame 1, San Bruno 1, San Mateo 7, Santa Barbara 3, Palo Alto 1, San Jose 6, Sonoma County 3, Trinity County 2, Ventura County 1, Oxnard 1, Ventura 2, Yolo County 17, Davis 4, Winters 6.

Diphtheria

13 cases: Oakland 1, Butte County 1, Calaveras County 1, Fresno 1, Santa Ana 1, Riverside County 1, Riverside 1, San Bernardino 1, San Francisco 2, Stockton 1, Tracy 1, California 1.*

German Measles

175 cases: Berkeley 2, Oakland 2, Piedmont 18, San Leandro 1, Fresno County 2, Kern County 1, Los Angeles County 19, Arcadia 1, Glendale 2, Glendora 1, Huntington Park 1, Long Beach 8, Los Angeles 17, Montebello 1, Pasadena 3, San Gabriel 1, San Marino 1, Whittier 1, Lynwood 2, Madera 1, Sausalito 3, Monterey County 3, Carmel 1, Monterey 1, Anaheim 2, Orange 1, Santa Ana 5, La Habra 2, Sacramento 1, Coronado 2, National City 1, San Diego 9, San Francisco 10, San Joaquin County 1, Lodi 1, San Luis Obispo County 1, Paso Robles 2, San Mateo County 1, Daly City 1, Redwood City 2, San Mateo 1, Santa Barbara County 9, Santa Maria 1, Palo Alto 2, San Jose 1, Sonoma County 2, Santa Rosa 1, Tulare County 5, Davis 2, Winters 3, Yuba County 2.

Influenza

38 cases: Oakland 1, Bakersfield 1, Los Angeles County 5, Long Beach 1, Los Angeles 6, Santa Monica 1, Santa Ana 1, San Diego 2, Menlo Park 2.

Measles

206 cases: Alameda County 1, Oakland 2, Piedmont 2, Contra Costa County 1, Del Norte County 1, Kern County 1, Los Angeles County 50, Avalon 3, Burbank 2, Compton 1, Huntington Park 12, Long Beach 4, Los Angeles 16, Monrovia 1, Lynwood 1, South Gate 4, Maywood 2, Merced County 1, Monterey County 9, Monterey 1, Soledad 1, Napa County 2, Napa 9, Orange County 1, Santa Ana 1, La Habra 1, Beaumont 3, Sacramento 1, San Bernardino County 2, Coronado 1, San Diego 14, San Francisco 6, Stockton 3, San Luis Obispo County 2, San Luis Obispo 1, San Mateo County 11, Redwood City 2, Menlo Park 1, Santa Clara County 1, Santa Cruz County 2, Santa Cruz 1, Sonoma County 3, Stanislaus County 1, Modesto 2, Sutter County 1, Tulare County 1, Tulare 1, Tuolumne County 1, Ventura County 4, Fillmore 1, Ventura 1, Yolo County 3, Winters 2.

Mumps

417 cases: Alameda 9, Berkeley 1, Oakland 2, Contra Costa County 1, Fresno County 3, Fresno 1, Kern County 2, Bakersfield 1, Tehachapi 1, Susanville 1, Los Angeles County 21, Alhambra 10, Arcadia 1, Burbank 2, El Monte 1, Glendora 1, Huntington Park 1, Inglewood 3, Long Beach 4, Los Angeles 54, Montebello 3, Pasadena 5, Pomona 2, Redondo 1, San Gabriel 1, Santa Monica 1, Whittier 4, Torrance 1, Lynwood 2, South Gate 6, Monterey Park 1, Madera 1, Marin County 1, Orange County 6, Anaheim 2, Fullerton 2, Huntington Beach 2, Newport Beach 2, Santa Ana 6, La Habra 1, Sacramento County 2, San Diego County 13, Chula Vista 2, Coronado 1, Escondido 1, La Mesa 2, National City 2, San Diego 122, San Francisco 22, San Joaquin County 9, San Luis Obispo County 7, San Luis Obispo 1, San Mateo County 12, Daly City 1, Redwood City 1, Menlo Park 1, Santa Barbara County 3, Santa Barbara 18, Palo Alto 1, Sonoma County 4, Sutter County 5, Tehama County 1, Tulare 1, Ventura County 2, Oxnard 1, Ventura 1, Yuba County 1, Sacramento 2, San Bernardino County 5.

Pneumonia (Lobar)

48 cases: Berkeley 1, Oakland 2, San Leandro 1, Los Angeles County 7, Compton 1, Los Angeles 17, Pasadena 1, San Diego 2, San Francisco 7, San Joaquin County 1, Redwood City 1, Modesto 1, Sutter County 1.

Scarlet Fever

63 cases: Alameda County 2, Berkeley 1, Oakland 2, Butte County 1, Fresno County 2, Fresno 1, Los Angeles County 5, Avalon 1, Long Beach 3, Los Angeles 18, South Gate 1, Merced

* Cases charged to "California" represent patients ill before entering the State or those who contracted their illness traveling about the State throughout the incubation period of the disease. These cases are not chargeable to any one locality.

County 1, Riverside 1, Sacramento County 1, Sacramento 2, San Bernardino County 1, San Diego County 1, National City 1, Oceanside 1, San Diego 1, San Francisco 4, San Joaquin County 1, Burlingame 1, Santa Clara County 1, San Jose 1, Stanislaus County 2, Dinuba 2, Fillmore 1, Yolo County 1, California 1.*

Smallpox

No cases reported.

Typhoid Fever

4 cases: Los Angeles 1, Perris 1, Tulare County 1, Tuolumne County 1.

Whooping Cough

526 cases: Alameda County 10, Alameda 1, Albany 2, Berkeley 1, Hayward 1, Oakland 28, Piedmont 5, San Leandro 1, Oroville 1, Colusa County 1, Contra Costa County 4, El Cerrito 4, Fresno County 4, Clovis 1, Fresno 3, Kern County 1, Bakersfield 4, Lemoore 3, Los Angeles County 75, Alhambra 10, Arcadia 1, Culver City 2, El Monte 1, Glendale 1, Inglewood 1, Long Beach 5, La Verne 1, Los Angeles 22, Monrovia 2, Pasadena 14, Pomona 4, San Fernando 4, San Gabriel 1, Vernon 2, Whittier 2, Lynwood 2, South Gate 4, Monterey Park 1, Gardena 1, Marin County 1, Merced 1, Monterey County 5, Orange County 11, Anaheim 1, Fullerton 3, Santa Ana 11, Plumas County 2, Sacramento County 2, Sacramento 21, San Bernardino County 7, San Bernardino 2, San Diego County 30, Chula Vista 3, Coronado 1, National City 11, Oceanside 3, San Diego 70, San Francisco 31, San Joaquin County 11, Stockton 4, Paso Robles 1, San Mateo County 1, Redwood City 3, San Mateo 1, San Carlos 1, Santa Barbara County 4, Santa Barbara 6, Santa Maria 1, Santa Clara County 1, San Jose 6, Sonoma County 6, Santa Rosa 1, Stanislaus County 2, Sutter County 2, Trinity County 1, Dinuba 3, Sonora 3, Ventura County 2, Fillmore 3, Oxnard 2, Santa Paula 5, Yolo County 1, Winters 8.

Dysentery (Amoebic)

5 cases: Los Angeles County 1, Alhambra 1, Los Angeles 1, San Bernardino County 1.

Dysentery (Bacillary)

31 cases: Los Angeles County 2, Los Angeles 7, San Bernardino County 15, Santa Clara County 3, Sonoma County 3, Yolo County 1.

Leprosy

2 cases: Sacramento.

Poliomyelitis

8 cases: Kern County 1, Los Angeles County 1, Long Beach 1, Pasadena 1, Riverside 1, San Bernardino County 1, Ontario 1, Tulare County 1.

Tetanus

2 cases: Los Angeles 1, San Bernardino County 1.

Trachoma

4 cases: Fresno 1, Kern County 2, San Jose 1.

Encephalitis (Epidemic)

One case: Tulare County.

Jaundice (Epidemic)

One case: Whittier.

Food Poisoning

30 cases: Contra Costa County 5, San Francisco 25.

Undulant Fever

7 cases: Oakland 1, San Bernardino County 1, San Diego County 1, San Mateo County 1, Solano County 1, Sutter County 1, Yuba County 1.

Tularemia

3 cases: Los Angeles County 2, Sonoma County 1.

Septic Sore Throat

One case: Chowchilla.

Relapsing Fever

One case: Eldorado County.

Epilepsy

46 cases: Oakland 1, Los Angeles County 3, Alhambra 1, Los Angeles 32, Mendocino County 3, Napa County 2, Santa Ana 1, San Bernardino County 1, San Francisco 1, Stockton 1.

Rabies (Animal)

15 cases: Los Angeles County 3, Inglewood 1, San Diego County 5, National City 3, San Diego County 3.

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